



[3411-15-P]

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596-AD20

Proposed Directive for Commercial Filming in Wilderness; Special Uses

Administration

AGENCY: Forest Service, USDA

ACTION: Notice of proposed directive; request for public comment.

SUMMARY: The Forest Service proposes to incorporate interim directive (ID) 2709.11-2013.1 into Forest Service Handbook (FSH) 2709.11, chapter 40 to make permanent guidance for the evaluation of proposals for still photography and commercial filming on National Forest System Lands. The proposed amendment would address the establishment of consistent national criteria to evaluate requests for special use permits on National Forest System (NFS) lands. Specifically, this policy provides the criteria used to evaluate request for special use permits related to still photography and commercial filming in congressionally designated wilderness areas. Public comment is invited and will be considered in the development of the final directive.

DATES: Comments must be received in writing on or before [Insert date 60 days from date of publication in the **FEDERAL REGISTER**] to be assured of consideration.

ADDRESSES: Submit comments electronically by following the instructions at the federal eRulemaking portal at <http://www.regulation.gov> or submit comments

via fax to 703-605-5131 or 703-605-5106. Please identify faxed comments by including “Commercial Filming in Wilderness” on the cover sheet or first page. Comments may also be submitted via mail to Commercial Filming in Wilderness, USDA, Forest Service, Attn: Wilderness & Wild and Scenic Rivers (WWSR), 201 14th Street, S.W., Mailstop Code: 1124, Washington, DC 20250-1124. E-mail comments may be sent to: *reply_lands@fs.fed.us*. If comments are submitted electronically, duplicate comments should not be sent by mail. Hand-delivered comments will not be accepted and receipt of comments cannot be confirmed. Please restrict comments to issues pertinent to the proposed directive, explain the reasons for any recommended changes, and, where possible, reference the specific section and wording being addressed.

All comments, including names and addresses when provided, will be placed in the record and be made available for public inspection and copying. The public may inspect the comments received at the USDA Forest Service Headquarters, Sidney R. Yates Federal Building, 201 14th Street, S.W., Washington, DC, in the Office of the Director, WWSR, 5th Floor South, during normal business hours. Visitors are encouraged to call ahead to 202- 644-4862 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Elwood York, WWSR, at 202- 649-1727.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

1. Background and Need for the Proposed Directive

The proposed directive is necessary for the Forest Service to issue and administer special use authorizations that will allow the public to use and occupy National Forest System (NFS) lands for still photography and commercial filming in wilderness. The proposed directive FSH 2709.11, chapter 40, is currently issued as the third consecutive interim directive (ID) which is set to expire in October 2014. The previous directive addressed still photography in wilderness and did not provide adequate guidance to review commercial filming in wilderness permit proposals. The notice and comments are collected and used by Forest Service officials, unless otherwise noted, to ensure the use of NFS lands are authorized, in the public interest, and compatible with the Agency's mission and/or record authorization of use granted by appropriate Forest Service officials.

2. Overview of Proposed Directive, FSH 2709.11, chapter 40

The Forest Service is requesting public input with respect to Agency policy. Our intent with the issuance of this notice of proposed directive is to consider such input and, as appropriate, incorporate it into future policy. Certain suggestions, whether due to legislative or other limitations, may not be implemented through Agency policy, and we wish for the public to understand that as well.

The current language has been in place for 48 months. This proposal would make permanent guidelines for the acceptance and denial for still photography and commercial filming permits in congressionally designated

wilderness areas.

Section 45.1c – Evaluation of Proposals

This proposed section would include criteria in addition to that of still photography to incorporate commercial filming activities. Furthermore, the Agency is proposing to clarify when a special use permit may be issued to authorize the use of NFS lands if the proposed activity, other than noncommercial still photography would be in a congressionally designated wilderness area.

The proposed directive for FSH 2709.11, chapter 40, section 45.1c is as follows:

45.1c - Evaluation of Proposals

A special use permit may be issued (when required by sections 45.1a and 45.2a) to authorize the use of National Forest System lands for still photography or commercial filming when the proposed activity:

1. Meets the screening criteria in 36 CFR 251.54(e);
2. Would not cause unacceptable resource damage;
3. Would not unreasonably disrupt the public's use and enjoyment of the site where the activity would occur;
4. Would not pose a public health and safety risk; and
5. Meets the following additional criteria, if the proposed activity, other than noncommercial still photography (36 CFR 251.51), would be in a congressionally designated wilderness area:
 - a. Has a primary objective of dissemination of information about the use and enjoyment of wilderness or its ecological, geological, or other

features of scientific, educational, scenic, or historical value (16 U.S.C. 1131(a) and (b));

b. Would preserve the wilderness character of the area proposed for use, for example, would leave it untrammelled, natural, and undeveloped and would preserve opportunities for solitude or a primitive and unconfined type of recreation (16 U.S.C. 1131(a));

c. Is wilderness-dependent, for example, a location within a wilderness area is identified for the proposed activity and there are no suitable locations outside of a wilderness area (16 U.S.C. 1133(d)(6));

d. Would not involve use of a motor vehicle, motorboat, or motorized equipment, including landing of aircraft, unless authorized by the enabling legislation for the wilderness area (36 CFR 261.18(a) and (c));

e. Would not involve the use of mechanical transport, such as a hang glider or bicycle, unless authorized by the enabling legislation for the wilderness area (36 CFR 261.18(b));

f. Would not violate any applicable order (36 CFR 261.57); and

g. Would not advertise any product or service (16 U.S.C. 1133(c)).

3. Regulatory Certifications:

Environmental Impact

The proposed directive is incorporating Interim Directive FSH 2709.11, chapter 40, section 45.51b into its parent text at section 45.1c. It will provide guidelines for accepting and denying still photography and commercial filming

applications in congressionally designated wilderness areas. Agency regulations at 35 CFR 220.6(d) (2) (73 FR 43093) exclude from documentation in an environmental assessment or impact statement “rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.” The Agency has concluded that this directive falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environment assessment or environmental impact statement.

Regulatory Impact

The proposed directive has been reviewed under USDA procedures and Executive Order 12866 on regulatory planning and review. It has been determined that this is not an economically significant action. This action will not have an annual effect of \$100 million or more on the economy, nor will it adversely affect productivity, competition, jobs, the environment, public health and safety, or State or local governments. This proposed directive will not interfere with an action taken or planned by another agency, nor will it raise new legal or policy issues. Finally the proposed directive will not alter the budgetary impact of entitlement, grant, user fee, or loan programs or the rights and obligations of beneficiaries of those programs.

The proposed directive has been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A small entity flexibility

assessment has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by SBREFA. This proposed directive focuses on National Forest System special use permits regarding still photography and commercial filming in congressionally designated wilderness areas.

Federalism

The Agency has considered this directive under the requirements of Executive Order 13132 on federalism and has determined that the proposed directive conforms with the federalism principles set out in this Executive Order; will not impose any compliance costs on the states; and will not have substantial direct effects on the States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has determined that no further assessment of federalism implications is necessary.

Consultation and Coordination with Indian Tribal Governments

In conjunction with Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” the Agency invited Tribes to consult on the proposed directive prior to review and comment by the general public starting November 29, 2013, and ending on April 30, 2014. The consultation process was initiated through written instructions from the Deputy Chief for the National Forest System to the Regional Foresters and subsequently to the Forest Supervisors.

Tribes were provided 120 days to discuss the proposed policy. During that time, Tribal Liaisons and Line Officers were available to review the proposed directive and answer Tribal concerns.

Through this Tribal consultation, the Agency has assessed the impact of this proposed directive on Indian Tribes and determined that it does not have substantial direct or unique effects on Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

The Agency has also determined that the directive does not impose substantial direct compliance costs on Indian tribal governments or preempt tribal law.

No Taking Implications

The Agency has analyzed the proposed directive in accordance with the principles and criteria contained in Executive Order 12630. The Agency has determined that the proposed directive does not pose the risk of taking private property.

Civil Justice Reform

The directive has been reviewed under Executive Order 12988 of February 7th, 1996, “Civil Justice Reform”. At the time of adoption of the directives, (1) all State and local laws and regulations that conflict with the directives or that impede full implementation of the directives were not preempted; (2) no retroactive effect was given to the directives; and (3) administrative proceedings are not required before parties can file suit in court to challenge its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandate Reform Act of 1995, (2 U.S.C. 1531-1538) the Agency has assessed the effects of the proposed directive on State, local and Tribal governments and the private sector. Therefore a statement under section 202 of the act is not required.

Energy Effects

The Agency has reviewed the proposed directive under Executive Order 13211 of May 18, 2001, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.” The Agency has determined that the directive does not constitute a significant energy action as defined in the Executive Order.

Controlling Paperwork Burdens on the Public

The directive does not contain any additional record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use and, therefore, imposes no additional paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et al.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Mary Wagner,
Associate Chief,
Forest Service.

August 27, 2014
(Date)

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